

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

DOUGLAS M. OMMEN, Director  
Department of Insurance, Financial  
Institutions & Professional Registration  
State of Missouri,

Petitioner,

vs.

RICK G. BURTON

Serve at: 2139 West Kaylane Court  
Nixa, Missouri 65714  
(417) 827-9486

and

KATHY C. STANTON  
(a/k/a KATHY C. ALLEN)

Serve at: 10601 Highway F  
Sarcoxie, Missouri 65862  
(417) 725-4864

and

STEPHANIE L. GRAY

Serve at: 12717 Lawrence 1022  
Sarcoxie, Missouri 64862  
(417) 849-9962

and

GUARANTY TITLE COMPANY, INC.

Serve at Registered Agent, Rick G. Burton at:  
1881 North Highway CC  
Nixa, Missouri 65714  
(417) 890-6161

and

Case No.:

070122097C

**FILED**

DEC 06 2007

ADMINISTRATIVE HEARING  
COMMISSION

GUARANTY TITLE COMPANY OF )  
SOUTHWEST MISSOURI )  
 )  
Serve Registered Agent, Stephanie L. Gray at: )  
4220 Somerset )  
Battlefield, Missouri 65619 )  
(417) 849-9962 )  
 )  
Respondents. )

### COMPLAINT

DOUGLAS M. OMMEN, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondents Rick G. Burton, (Respondent Burton), Kathy C. Stanton (Respondent Stanton, also known as Kathy C. Allen), Stephanie L. Gray, Guaranty Title Company, Inc. (Respondent Guaranty), and Guaranty Title Company of Southwest Missouri (Respondent Guaranty SWM) – collectively “Respondents”, because:

### PARTIES

1. Petitioner is the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director” or “Petitioner”). The Director has the duty to administer Chapters 374, 375, and 381, RSMo, which includes the supervision, regulation, and discipline of title insurers, their agents and agencies licensed to operate and conduct business in the state of Missouri.
2. Respondent Burton is a natural person and a resident of Missouri. At all times relevant, Respondent Burton was listed as an owner and President of Respondent Guaranty. Respondent

Burton currently holds an insurance producer license issued by the Department which is set to expire on June 26, 2008. (License Number PR223145).

1. Respondent Stanton is a natural person and a resident of Missouri. At all times relevant, Respondent Stanton was listed as an owner of Respondent Guaranty. The Department issued an insurance producer license to Respondent Stanton. (License Number PR177277). Respondent Stanton's insurance producer license was revoked for tax compliance on August 12, 2004.

2. Respondent Gray is a natural person and a resident of Missouri. At all times relevant, Respondent Gray was listed as President of Respondent Guaranty SWM. Respondent Gray was issued an insurance producer license issued by the Department which expired on September 5, 2007. (License Number PR151691).

3. Respondent Guaranty is a Missouri corporation registered with the Missouri Secretary of State (Charter Number 00501456) with its principal place of business or corporate headquarters in Nixa, Missouri. Respondent Guaranty holds a business entity producer license issued by the Department which is set to expire on January 30, 2008 (License Number AG8013873). Respondent Guaranty, acting alone or through agents, conducted its title insurance business and also engaged in the business as a settlement agent in the closing of real estate sales.

4. Respondent Guaranty SWM is a Missouri corporation registered with the Missouri Secretary of State (Charter Number 00680437) with its principal place of business or headquarters in Ozark, Missouri. Respondent Guaranty SWM held a business entity producer license issued by the Department which expired on September 20, 2007. (License Number AG8020472). Guaranty

SWM, acting alone or through agents, conducted its title insurance business and also engaged in the business as a settlement agent in the closing of real estate sales.

### **JURISDICTION**

5. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2006).

### **COUNT I**

6. Respondents, individually and/or collectively, failed to uphold its or their fiduciary responsibility to its underwriter and title insurance applicants for premiums collected, in violation of §§ 383.131, RSMo (Supp. 2000), 375.051.1, and 375.051.2, RSMo (Supp. 2005), and grounds for discipline pursuant to § 375.141.1(2), RSMo.

7. The facts are as follows:

- a. On or about August 4, 2006, Stephen Babbit, owner of Tri-lakes Title and Escrow Company, a competing title insurance agency, complained to the department that Respondents Guaranty and Guaranty SWM were issuing commitments without an effective date and they had an employee with an expired license. Mr. Babbit further complained that Respondents Guaranty and Guaranty SWM are the same company and requested that the department conduct a review of the agencies' operations.

- b. On August 16, 2006, department investigator, Gerald Michitsch sent a letter to Michael Starrett, area president of Respondent Guaranty's insurance underwriter, Commonwealth Land Title Insurance Company/LandAmerica. The letter included a copy of Mr. Babbit's complaint and requested a copy of the last Guaranty audit conducted by LandAmerica.
- c. Also on August 16, 2006, Mr. Michitsch, sent a letter to Respondent Gray, President of Respondent SWM, requesting that she respond to the complaint filed by Mr. Babbit and that she send a copy of the complete escrow file from the complained about transaction to the department for review.
- d. On September 6, 2006 Mr. Michitsch received Respondent Gray's reply to his August 16, 2006 letter and after reviewing her response, determined that no title insurance law violations had occurred during the relevant transaction.
- e. On September 5, 2006, Mr. Michitsch received Mr. Starrett's reply to his August 16, 2006, letter. Mr. Starrett stated that LandAmerica last audited Guaranty in April 2006. The audit uncovered several shortages in the escrow account. According to Guaranty, the shortages were due to bank errors and closing errors.
- f. LandAmerica's April 2006 audit of Guaranty was conducted by LandAmerica's Audit and Advisory Resources section. The audit consisted of a reconciliation of the master escrow account through October 31, 2005, and the Branson escrow account through August 31, 2005. The April 2006

audit reached the following conclusions:

- i. The master and Branson escrow accounts contained a cumulative shortage of \$539,791.
  - ii. Seven (7) files contained shortages requiring third party finding in the amount of \$311,966.
  - iii. Eighty-one (81) files contained small dollar shortages caused by closer errors that Respondents committed to funding by April 30, 2006. These shortages totaled \$38,073.
  - iv. Thirty (30) files contained apparent shortages that Respondents were in the process of researching and resolving with the related escrow parties. These shortages totaled \$224,953.
  - v. Fifty-three (53) files contained apparent shortages from the Branson escrow account that Respondents were in the process of researching and funding with company funds or resolving with related escrow parties. These shortages totaled \$18,799.
- g. In February 2006, Respondents' underwriter, LandAmerica, audited Respondents' policy forms and made the following findings:
- i. Approximately 5,323 policies had not been reported to LandAmerica by Respondents, nor had premiums for those policies been remitted to LandAmerica.
  - ii. LandAmerica estimated that Respondents owed LandAmerica

approximately \$400,000 premium from unreported policies.

## **COUNT II**

8. Respondents, individually and/or collectively, disbursed funds from escrow accounts without corresponding deposits to the escrow accounts, a violation of § 381.412.2, RSMo (2000), and grounds for discipline pursuant to § 375.141.1(2), RSMo.

9. The facts are as follows:

- a. Petitioner incorporates the facts alleged in Count I of this Complaint as though fully set forth herein.

## **COUNT III**

10. Respondents individually and/or collectively, improperly withheld premiums paid by Missouri consumers, grounds for discipline pursuant to § 375.141.1(4), RSMo.

11. The facts are as follows:

- a. Petitioner incorporates the facts alleged in Counts I and II of this Complaint as though fully set forth herein.

## **COUNT IV**

12. Respondents, individually and/or collectively, used dishonest practices and demonstrated incompetence and financial responsibility in the conduct of business in this state, grounds for discipline pursuant to § 375.141.1(8), RSMo.

13. The facts are as follows:

- a. Petitioner incorporates the facts alleged in Counts I, II, and III of this Complaint as though fully set forth herein.
- b. Additionally, during the course of its or their title insurance business, Respondents failed to conduct reasonable reconciliations of escrow and construction disbursement accounts to ensure solvency of those accounts.
- c. On or about June 19, 2007, Respondents ceased title insurance operations in all locations. Respondents' multiple escrow accounts and multiple banks were frozen in response to Respondents' account shortages.
- d. During June and July 2007, Respondents' underwriter, LandAmerica, conducted an investigation into Respondents' title insurance business activities. As of July 9, 2007, the underwriter auditors estimated that Respondent SWM's escrow accounts were deficient approximately \$5.1 million. Further, the underwriter auditors estimated that Respondent SWM owed the underwriter approximately \$83,803 in unremitted policy premiums and \$341,739 on a promissory note executed by Respondents Burton and Stanton in November 2006.



- e. The Department has received multiple complaints from consumers who lost money that was deposited in Respondents' escrow accounts, construction disbursement accounts, and 1031 exchange accounts. Many of these complainants have filed civil lawsuits in an effort to collect funds entrusted to Respondents.

**COUNT V – RESPONDENT STANTON, ONLY**

14. Respondent Stanton has engaged in the conduct of title insurance business without a license, violating § 375.014.1, RSMo (Supp. 2006) which is grounds for discipline pursuant to § 375.141.1(12), RSMo (Supp. 2006).

15. The facts are as follows:

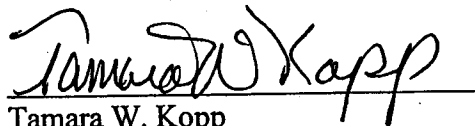
- a. Respondent Stanton's insurance producer license was revoked in 2004 for tax non-compliance.<sup>1</sup>
- b. Following the 2004 license revocation, department records indicated that Respondent Stanton was responsible for ensuring Respondent Guaranty's compliance with the Missouri insurance laws pursuant to § 375.015.2(2), RSMo.

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<sup>1</sup> House Bill 600, enacted by the Missouri General Assembly in 2003, directed state licensing agencies to revoke or suspend the professional licenses of those licensees who owed state income tax or who had failed to file state income taxes for three years.

**WHEREFORE**, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondents' respective insurance producer licenses and business entity producer license pursuant to § 375.141.1(2), (4) and (8), RSMo.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tamara W. Kopp", written over a horizontal line.

Tamara W. Kopp

Missouri Bar # 59020

Missouri Department of Insurance,  
Financial Institutions & Professional  
Registration

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ATTORNEY FOR PETITIONER

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